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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-197105

DATE: September 30, 1980

MATTER OF: *[Claim For]* Eugene C. Johnson - *Backpay Based on*
Detail to Higher Grade

DIGEST: Employee of General Accounting Office was detailed to higher-graded position on September 29, 1975. He was transferred with his position to General Services Administration on October 12, 1975, and continued to perform the higher-grade duties. Employee is entitled to retroactive temporary promotion and backpay for period of detail beyond 120 days until the position was reclassified downward on July 15, 1976. Detail was not one to unclassified duties merely because former GAO position had not been reclassified by GSA, but was a continuous detail to same position. However, employee is not entitled to pay at higher level after date of reclassification downward.

This decision concerns the appeal of Mr. Eugene C. Johnson of our Claims Division settlement certificate dated October 30, 1979 (Z-2814692). The settlement denied his claim for a retroactive temporary promotion and backpay based on an overlong detail to a higher-graded position.

The issue we are presented with is whether a detailed employee who is transferred with his entire group to another agency, without change in his official position, is entitled to retroactive temporary promotion and backpay. For the following reasons we maintain that he is.

Mr. Johnson was assigned by the General Accounting Office (GAO) to a position classified as a Supervisory Computer Systems Analyst, GS-14. He was also designated

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as the Deputy Assistant Director, Automated Transportation Audit Systems, Transportation and Claims Division. His supervisor was designated as the Director and occupied a position classified as a GS-15, Supervisory GAO Management Auditor. The Director retired on September 26, 1975, and Mr. Johnson assumed his duties on September 29, 1975. However, the General Accounting Office Act of 1975, Pub. L. No. 93-604, 88 Stat. 1960, transferred the transportation rate audit function and personnel from GAO to the General Services Administration (GSA). The transfer was effective October 12, 1975.

Mr. Johnson says that he was detailed to the Director's position from the date of his supervisor's retirement until October 1, 1978, the date of a transfer of function within GSA. Thus, he contends he is entitled to a temporary promotion and backpay on the basis of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), and 56 id. 427 (1977). We held therein that employees officially detailed to established higher-level positions for more than 120 days without proper sanction are entitled to retroactive temporary promotions with backpay beginning with the 121st day of the detail until the detail is terminated.

The Claims Division denied Mr. Johnson's claim on the basis that vacant positions are not transferred from one agency to another, and that the position to which Mr. Johnson was detailed was not established and classified to a grade or pay level by GSA until July 15, 1976, when it was established as a GS-14 position.

This Office recently decided a similar issue in Joyce R. Morrison, B-197206, August 12, 1980. In the Morrison case a Federal Power Commission (FPC) employee was transferred with her position to the Department of Energy (DOE) where she continued to perform the same duties. We held that employees transferred from FPC to DOE did not lose their status as classified employees notwithstanding the fact that their positions were not formally designated as DOE positions until later. The positions transferred to DOE continued to be established, classified positions. After the trans-

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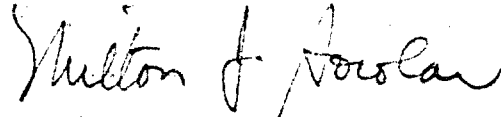
fer, Ms. Morrison was detailed to a higher-grade position that had been transferred from FPC. We held she was entitled to a retroactive temporary promotion and backpay for the period of the detail beyond 120 days. The detail was not considered as an assignment of unclassified duties merely because the former FPC position had not been reclassified as a DOE position.

The facts in the Morrison case are analogous here. The record is clear that Mr. Johnson was detailed to serve as Acting Director, a GS-15 position, on September 29, 1975. All the positions, with the exception of a supergrade position, were transferred to GSA on October 12, 1975. Mr. Johnson continued to perform the same duties as Acting Director after the date of transfer. It has been held that substance and not form should control and that the continuity of the detail is to be determined by the duties performed. Marvin R. Dunn, B-192437, September 20, 1978.

The GS-15 position was reclassified downward by GSA on July 15, 1976, to Digital Computer Systems Administrator, GS-330-14. When a position is classified downward during a detail, the detailed individual may only receive the salary authorized for that position, and he may not continue to receive pay at the higher level on and after the effective date of the reclassification. Jacob Klein, B-194891, August 8, 1979, 58 Comp. Gen. 719; Helen Mansfield, B-192765, May 9, 1979. Mr. Johnson refers to a September 1, 1976, letter as evidence that the GS-15 position was still classified at a later date. However, that letter indicates that it was a reconsideration request of the GS-14 reclassification action. While the initiating office had recommended a GS-15 classification, the Personnel Office recommended and approved a GS-14 position.

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Accordingly, Mr. Johnson is entitled to a retro-active temporary promotion with backpay for the period from the 121st day of his detail until the position was reclassified downward on July 15, 1976. Settlement of the claim will be made in due course.

A handwritten signature in cursive script, reading "Milton F. Jordan".

For the Comptroller General
of the United States